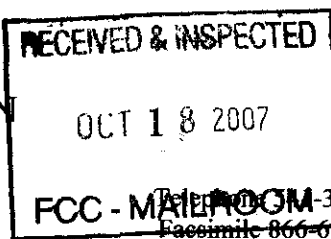


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WC 07-240

DOCKET FILE COPY ORIGINAL October 13, 2007

Marlene H. Dortch, Office of the Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Public Utilities Commission of Nevada
1150 East William Street
Carson City, Nevada 89701-3109

CC: Janice Myles, Paralegal
FCC
Room 5-C140
445 12 Street S.W.
Washington, DC 20554

Torry R. Somers
Embarq
330 South Valley View Boulevard
MS: NVLSVB0207
Las Vegas, NV 89107

Best Copy & Printing, Inc.
c/o Federal Communications
Commission
Room CY-B402
445 12th St. SW
Washington DC 20554

Patrick J. Reilly
Hale Lane Peek Dennison and Howard
3930 Howard Hughes Parkway, Fourth
Floor
Las Vegas, NV 89169

RE: Petition for preemption on behalf of Autotel

Dear Ms. Dortch:

Enclosed please find for the FCC's consideration the original and four copies of the Petition of Autotel pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Public Utilities Commission of Nevada Regarding Enforcement of an Interconnection Agreement with Embarq Corporation (formerly Central Telephone of Nevada d/b/a Sprint of Nevada).

Very truly yours,


Marianne Dugan

encl

RECEIVED & INSPECTED

OCT 18 2007

FCC - MAILROOM

BEFORE THE FEDERAL COMMUNICATIONS COMMISSION

In the Matter of Petition of Autotel)
pursuant to Section 252(e)(5) of the)
Communications Act for Preemption of the)
Jurisdiction of the Public Utilities)
Commission of Nevada Regarding)
Enforcement of Interconnection)
Agreement with Embarq (formerly)
Central Telephone of Nevada d/b/a)
Sprint of Nevada)

PETITION FOR PREEMPTION

Pursuant to Section 252(e)(5) of the Communications Act, Autotel hereby petitions for preemption of the jurisdiction of the Public Utilities Corporation of Nevada regarding a Complaint for enforcement of an interconnection agreement between Autotel and Central Telephone of Nevada d/b/a Sprint of Nevada (now known as "Embarq"; hereinafter "Embarq"). This Petition is supported by the affidavit of Richard L. Oberdorfer, President of Autotel, the complaint filed with the PUC, and the Nevada PUC order dismissing the Complaint, all attached to this Petition.

POINTS AND AUTHORITIES

Section 252(b) of the Act provides:

(4) Action by State Commission

(C) The State commission shall resolve each issue set forth in the petition and the response, if any, by imposing appropriate conditions as required to implement subsection (c) of this section upon the parties to the agreement, and shall conclude the resolution of any unresolved issues not late than 9 months after the date on which the local exchange carrier received the request under this section.

Section 252(b)(4)(C) gives a State commission nine months after the date the LEC

receives the request to resolve each issue set forth in the petition and the response.

As explained in the Affidavit of Richard L. Oberdorfer accompanying this Petition, Autotel is a small CMRS company authorized to provide wireless service in Nevada. Central Telephone Company-Nevada d/b/a Sprint of Nevada (Embarq) is a telecommunications utility regulated by the Nevada Commission, with offices in Las Vegas, Nevada. Autotel and Embarq entered into an Interconnection Agreement (ICA) which was approved by the Nevada PUC on October 11, 2002 in Docket No. 02-8021. Among other services, the ICA obligates Embarq to interconnect its network with Autotel's network for the mutual exchange of traffic.

The ICA provides that Autotel may interconnect at any technically feasible point in Embarq's network. The ICA also provides at C.1.3.1, "Interconnection mid-span meet arrangements will be made available to Autotel."

On December 16, 2004, Autotel contacted Embarq's Wireless interconnection Manager, Teresa Singer, and requested the relocation of the party's existing single DS1 interconnection via one of three technically feasible mid-span meet interconnection arrangements. Embarq refused to provision their portion of any new mid-span meet point interconnection facility requested by Autotel.

On September 6, 2005 Autotel contacted Embarq's National Wireless Access Center and placed an order for a microwave mid-span meet interconnection facility between Embarq's South central office and Autotel's switch location at 6A Black Mountain Road. Josh in the Embarq Center informed Autotel he could not work the order because the Autotel address was not in Embarq's system. The next day he referred the matter to Ms. Singer. Embarq refused to provision their portion of the new mid-span meet point interconnection facility construction.

On July 28, 2006, Autotel contacted Ms. Singer again and reordered the mid-span meet

PETITION FOR PREEMPTION - PAGE 2

interconnection facility. Embarq refused to provision their portion of the new mid-span meet point interconnection facility construction.

In an August 24, 2005 Order in Docket No. 05-2022, the Nevada PUC ordered: "The Commission confirms that under mid-span meet point arrangements. Sprint is responsible for provisioning fifty percent of the interconnection facilities or to Sprint's exchange boundaries, whichever is less. Autotel is responsible for provisioning fifty percent of the interconnection facilities or to Sprint's exchange boundaries, whichever is greater."

The remaining issue is Embarq's refusal to provision its portion of the new mid-span meet point interconnection facility construction. In its September 1, 2006, complaint, Autotel requested that the PUC enforce the terms of the ICA relating to midspan meet point interconnection facilities by ordering that Embarq shall pay its portion of the costs to build out the facilities to the meet point.

On September 5, 2006, the PUC dismissed the September 1, 2006, complaint, stating:

Your submission on September 1, 2006 is being returned to you due to deficiencies. It does not comply with the Commission's rules and regulations for filings of this nature. The Complaint is being rejected without prejudice.

Any complaint regarding telecommunications companies must comply with requirements listed in chapters 703 and 704 of the Nevada Administrative Code, the Nevada Revised Statutes, and any applicable federal law.

Moreover, the relief requested in the Complaint has already been granted in the order that the Commission issued under Docket No. 05-2022.

The complaint did comply with all requirements, and the prior PUC decision did not address the remaining issue presented in Autotel's September 1, 2006, complaint.

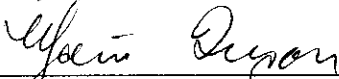
In dismissing these matters, the Commission did not resolve the unresolved issues between the parties. The Commission did not schedule any proceeding in order to complete its

duties under section 252(b)(4). The Commission requested no information from either party necessary for resolution of the unresolved issues. The Commission did not make a determination as to whether the contract language proposed by Autotel meets the requirements of section 251 and the regulations, and declined to make a decision regarding whether to order Embarq to construct its portion of the microwave meet point interconnection facility.

The situation is akin to that in In re Petition of MCI for Preemption Pursuant to Section 252(e)(5) of the Telecommunications Act of 1996, 12 F.C.C.R., 15594. In that case the FCC explained that a state agency can fail to act under section 252(e)(5) even if it has issued an arbitration order, if that order is a general dismissal that does not resolve all issues "clearly and specifically" presented to it. Id. at 27. See also Global NAPS, Inc. v. Federal Communications Commission, 291 F.3d 832 (D.C. Cir. 2002) ("The FCC's interpretation thus suggests that only if the state commission either does not respond to a request, or refuses to resolve a particular matter raised in a request, does preemption become a viable option") (emph. added).

The statutory nine-month limit to resolve open issues has elapsed. None of the open issues have been resolved by the PUC, and PUC has refused to make a decision regarding whether to order Embarq to construct its portion of the microwave meet point interconnection facility. Preemption is appropriate.

Respectfully submitted October 13, 2007.



Marianne Dugan, attorney
259/E. 5th Ave., Suite 200-D
Eugene, OR 97401
(541) 338-7072
Fax (866) 650-5213

BEFORE THE FEDERAL COMMUNICATIONS COMMISSION

In the Matter of Petition of Autotel)
pursuant to Section 252(e)(5) of the)
Communications Act for Preemption of the)
Jurisdiction of the Public Utilities)
Commission of Nevada Regarding)
Enforcement of Interconnection)
Agreement with Embarq (formerly)
Central Telephone of Nevada d/b/a)
Sprint of Nevada)

AFFIDAVIT OF RICHARD OBERDORFER

I, Richard L. Oberdorfer, being duly sworn, depose and say:

1. I own two small CMRS companies, Western Radio Services Co. (Western), which provides wireless service in Oregon, and Autotel, which provides wireless service in Nevada.
2. I am the person who represents both companies in interconnection negotiations with ILECs and sometimes I represent those companies in arbitration proceedings before State Commissions.
3. Autotel is a small CMRS company authorized to provide wireless service in Nevada. Central Telephone Company-Nevada d/b/a Sprint of Nevada (Embarq) is a telecommunications utility regulated by the Nevada Commission, with offices in Las Vegas, Nevada. Autotel and Embarq entered into an Interconnection Agreement (ICA) which was approved by the Nevada PUC on October 11, 2002 in Docket No. 02-8021.
4. Among other services, the ICA obligates Embarq to interconnect its network with

Autotel's network for the mutual exchange of traffic.

5. The ICA provides that Autotel may interconnect at any technically feasible point in Embarq's network. The ICA also provides at C.1.3.1, " Interconnection mid-span meet arrangements will be made available to Autotel."

6. On December 16, 2004, Autotel contacted Embarq's Wireless interconnection Manager, Teresa Singer, and requested the relocation of the party's existing single DS1 interconnection via one of three technically feasible mid-span meet interconnection arrangements. Embarq refused to provision their portion of any new mid-span meet point interconnection facility requested by Autotel.

7. On September 6, 2005 Autotel contacted Embarq's National Wireless Access Center and placed an order for a microwave mid-span meet interconnection facility between Embarq's South South central office and Autotel's switch location at 6A Black Mountain Road. Josh in the Embarq Center informed Autotel he could not work the order because the Autotel address was not in Embarq's system. The next day he referred the matter to Ms. Singer. Embarq refused to provision their portion of the new mid-span meet point interconnection facility construction.

8. On July 28, 2006, Autotel contacted Ms. Singer again and reordered the mid-span meet interconnection facility. Embarq refused to provision their portion of the new mid-span meet point interconnection facility construction.

9. In an August 24, 2005 Order in Docket No. 05-2022, the Nevada PUC ordered: "The Commission confirms that under mid-span meet point arrangements. Sprint is responsible for provisioning fifty percent of the interconnection facilities or to Sprint's exchange boundaries, whichever is less. Autotel is responsible for provisioning fifty percent of the interconnection

facilities or to Sprint's exchange boundaries, whichever is greater."

10. The remaining issue is Embarq's refusal to provision its portion of the new mid-span meet point interconnection facility construction. In its September 1, 2006, complaint, Autotel requested that the PUC enforce the terms of the ICA relating to midspan meet point interconnection facilities by ordering that Embarq shall pay its portion of the costs to build out the facilities to the meet point.

11. On September 5, 2006, the PUC dismissed the September 1, 2006, complaint, stating:

Your submission on September 1, 2006 is being returned to you due to deficiencies. It does not comply with the Commission's rules and regulations for filings of this nature. The Complaint is being rejected without prejudice.

Any complaint regarding telecommunications companies must comply with requirements listed in chapters 703 and 704 of the Nevada Administrative Code, the Nevada Revised Statutes, and any applicable federal law.

Moreover, the relief requested in the Complaint has already been granted in the order that the Commission issued under Docket No. 05-2022.

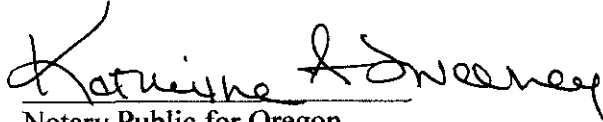
12. My complaint did comply with all requirements, and the prior PUC decision did not address the remaining issue presented in Autotel's September 1, 2006, complaint.

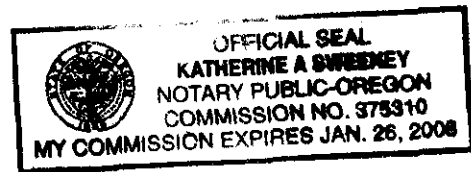
13. In dismissing these matters, the Commission did not resolve the unresolved issues between the parties. The Commission did not schedule any proceeding in order to complete its duties under section 252(b)(4). The Commission requested no information from either party necessary for resolution of the unresolved issues. The Commission did not make a determination as to whether the contract language proposed by Autotel meets the requirements of section 251 and the regulations, and declined to make a decision regarding whether to order Embarq to construct its portion of the microwave meet point interconnection facility.

I declare under the penalty of perjury that the above is true and correct and this Affidavit was executed on the 5 day of October, 2007, in Bend, Oregon.


Richard L. Oberdorfer

Subscribed and sworn to before me this 5 day of October, 2007.


Notary Public for Oregon
My Commission Expires: 1/26/08



CERTIFICATE OF SERVICE

I, Marianne Dugan, hereby certify that on October 13, 2007, I sent the foregoing document via email to the staff person of the FCC identified in the attached service list and to the FCC's duplicating contractor Best Copy and Printing, Inc., by sending it to:

Janice M. Myles
Wireline Competition Bureau
Federal Communications Commission
janice.myles@fcc.gov

Best Copy and Printing, Inc.
c/o Federal Communications Commission
fcc@bcpiweb.com

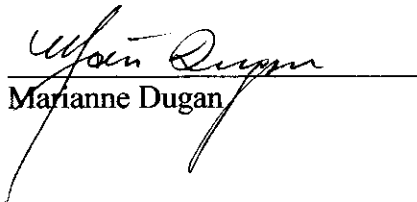
and sent it via First Class United States Mail, postage prepaid, to the other addresses listed below:

Marlene H. Dortch, Secretary
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